

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DAMMEYIN A. JOHNSON,)

)

Petitioner,)

)

v.)

Civil Action No. 08M-02-025 WCC

)

WARDEN PERRY PHELPS,)

COMMISSIONER CARL DANBERG)

BOTH OF THE DELAWARE)

CORRECTIONAL CENTER,)

)

Respondents.)

Submitted: November 25, 2008

Decided: February 20, 2009

On State Respondent's Motion for Summary Judgment. GRANTED.

MEMORANDUM OPINION

Kevin R. Slattery, Esquire, Department of Justice, 820 North French Street,
Wilmington, Delaware 19801.

Dammeyin Johnson, Webb Correctional Facility, 200 Greenbank Road,
Wilmington, Delaware 19808.

CARPENTER, J.

On this 20th day of February 2009, upon consideration of the State's Motion for Summary Judgment, it appears to the Court that:

1. On January 8, 1999, Dammeyin Johnson (the "Petitioner") was sentenced to 12 years of incarceration followed by Level 4 and various levels of probation for Unlawful Sexual Intercourse in the Second Degree and Aggravated Intimidation.¹ In July 1998 the Petitioner had also received a boot camp sentence on an unrelated drug offense.² Initially, his short term release date for the first two offenses was set for October 9, 2008. Between March 1999 and November 2006, the Petitioner earned 228 days of good time credits for participating in educational and work programs. 135 of those 228 days were deducted from his sentence pursuant to 11 *Del. C.* § 4381. As a result, his short term release date for the first two offenses was modified to May 27, 2008. As of that date, the Petitioner was reclassified to the boot camp diversion program as part of his sentence for the drug offense. He subsequently was medically discharged from boot camp and was resentenced by Judge Richard Cooch on December 11, 2008 to Level 3 probation.³ He is presently serving the Level 4 portion of this judge's sentence at the Webb Correctional Facility.

¹ Docket 26 (Sentence Order, Jan. 8, 1999, J. Carpenter).

² Docket 10 (Sentence Order, July 13, 1998, J. Cooch).

³ Docket 35 (Sentence Order, Dec. 11, 2008, J. Cooch).

2. On February 11, 2008, the Petitioner filed a petition for a writ of mandamus seeking to compel the Commissioner of the Department of Correction (“DOC”) and the Warden at the James T. Vaughn Correctional Center to recalculate his good time credits and subtract another 54 days of good time credits from his sentence. The Commissioner and Warden responded to the writ on June 17, 2008, and the State filed this Motion for Summary Judgment on September 18, 2008, to which the Petitioner has responded.

3. The Petitioner claims that the DOC has miscalculated his good time credits. Specifically, the Petitioner contends that he has earned and is therefore entitled to all 228 of the good time education and work related credits. The Petitioner also asserts that the DOC impermissibly decreased the number of credits he received on a monthly basis, even though there had been no change in the level of his participation in the educational and work programs the prison offers.

4. The State argues that the Petitioner is not entitled as a matter of right to have those 54 additional good time credits deducted from his sentence in any other manner than is provided for under the statute. They argue that, pursuant to the statute, he is only permitted to receive credit at a rate of 2 or 2.5 days per month (depending on the type of rehabilitative program), even if he earned more credits in a particular month, which the State acknowledges occurred in this case.

5. Summary judgment is appropriate where there are no genuine issues of material fact.⁴ A genuine issue of fact exists if “any rational trier of fact would infer that plaintiffs have proven the elements of a prima facie case.”⁵ The Court must consider the facts in a light most favorable to the non-moving party.⁶ If the evidence shows that there are no material facts in dispute, then the burden shifts to the non-moving party to demonstrate that such facts do exist and that trial is required to resolve them.⁷

6. A writ of mandamus is an “extraordinary remedy” that will compel someone or something to do or not do a given act.⁸ Mandamus shall issue only where the petitioner has a “clear legal right to the performance of a non-discretionary duty.”⁹

⁴*Roberts v. Delmarva Power & Light Co.*, 2009 WL 222985, at *3 (Del. Super. Jan. 13, 2009) (citing Del. Super. Civ. R. 56(c)).

⁵ *Id.* (quoting *Cerberus Int’l, Ltd. v. Apollo Mgmt., L.P.*, 794 A.2d 1141, 1149 (Del. 2002) (citation omitted)).

⁶ *Id.*

⁷ *Collins v. Ashland, Inc.*, 2009 WL 81297, at *2 (Del. Super. Jan. 6, 2009).

⁸ *Johnson v. Taylor*, 901 A.2d 120, 121 (Del. 2006) (citing *In re Bordley*, 545 A.2d 619, 620 (Del. 1988)); see also *Taylor v. Rendina & Howard*, 2004 WL 2240169, at *1 (Del. Super. Sept. 28, 2004) (stating that “[a] writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official, or agency to compel the performance of a duty to which the petitioner has established a clear legal right.” (quoting *Gibbs v. Carroll*, 2003 WL 21999595, at *1 (Del. Super., Jan. 15, 2003) (ORDER))).

⁹ *Am. Fed’n of State County & Mun. Employees Council 81 v. State*, 2008 WL 4348884, at *3 (Del. Super. Sept. 24, 2008) (citing *Darby v. New Castle Gunning Bedford Educ. Ass’n*, 336 A.2d 209, 210 (Del. 1975)).

7. Under Delaware law, inmates may earn two kinds of good time credits: (1) behavior credits and (2) merit credits.¹⁰ Behavior credits may be earned for good

¹⁰*Harley v. Dep't of Corrections*, 1999 WL 1568386, at *1 (Del. Super. Jan. 21, 1999); *see also* 11 Del. C. § 4381 (1999). The statute in effect at the time of the Petitioner's sentencing provided that good time credits may be awarded as follows:

(a) All sentences imposed for any offenses other than a life sentence imposed for class A felonies may be reduced by earned good time under the provisions of this section and rules and regulations adopted by the Commissioner of Corrections.

(b) "Good time" may be earned for good behavior while in the custody of the Department of Corrections when the person has not been guilty of any violation of discipline, rules of the Department or any criminal activity and has labored with diligence toward rehabilitation according to the following conditions:

(1) During the first year of any sentence, good time may be awarded at the rate of 2 days per month beginning on the first day of confinement.

(2) After completing 365 days of any sentence, good time may be awarded at the rate of 3 days per month.

(3) No person shall be awarded more than 36 days of good time under this subsection for good behavior in any 1 year consisting of 365 calendar days actually served.

(c) "Good time" may be earned for participation in educational and/or rehabilitation programs as designated by the Commissioner under the following conditions:

(1) Good time may be awarded for satisfactory participation in approved programs at a rate of up to 2 days per calendar month.

(2) No more than 24 days of program good time total as established in this subsection may be awarded in any 1 year consisting of 365 days actually served.

(d) "Good time" may be earned by participation in work programs as authorized by § 6532 of this title at a rate of up to 2.5 days per month with a limit of 30 days earned during any 1 year consisting of 365 days actually served.

(e) No more than a total of 90 days of "good time" may be earned in any 1 year consisting of 365 days actually served.

behavior by abiding by the DOC's rules, and it appears that there is no dispute here that these credits were appropriately applied to the Petitioner's sentence.¹¹ The issue here surrounds merit credits, which may be earned for participation in educational and work programs.¹² According to the version of 11 *Del. C.* § 4381 in effect at the time of the Petitioner's sentencing, good time credits for participation in educational programs may be awarded at a rate of up to 2 days per month,¹³ and good time credits for participation in work programs may be awarded at a rate of 2.5 days per month.¹⁴ However, good time credits awarded for participation in educational and work programs are discretionary, and incarcerated individuals do not have a right to these credits.¹⁵

8. Here, the DOC has submitted an affidavit explaining the Petitioner's good time credits. The affidavit explains that although the Petitioner did earn a total

¹¹ *Harley*, 1999 WL 1568386, at *1 (citing *Snyder v. Andrews*, 708 A.2d 237, 239 (Del. Super. 1998)); *see also* 11 *Del. C.* § 4381(b).

¹² *Id.*; *see also* 11 *Del. C.* § 4381(c)-(d).

¹³ 11 *Del. C.* § 4381(c)(1).

¹⁴ 11 *Del. C.* § 4381(d).

¹⁵ *Taylor v. Rendina & Howard*, 2004 WL 2240169, at *1 (explaining that "[a] prisoner is not entitled to good time credit as a matter of constitutional right." (quoting *Gibbs v. Carroll*, 2003 WL 21999595, at *1 (Del. Super., Jan. 15, 2003) (ORDER))); *see also Hopkins v. Vinson*, 2005 WL1348373, at *2 (Del. Super. May 9, 2005) (explaining that the statute "grants the Commissioner discretion to designate which rehabilitation programs will justify the awarding of such credits.").

of 228 good time credits, “he was only eligible to have 135 days deducted from his sentence. . . . because he occasionally earned more good time credit in a month than the statute permitted to be applied to reduce his sentence.”¹⁶ The Court has reviewed the DOC’s worksheets attached to the affidavit calculating the good time credits. With the exception of a few minor adjustments totaling 2.5 days of credit time, the Court finds the DOC’s calculations to be consistent with the credit time limitations found in the statute. The Court will order the additional credit of 2.5 days be applied to Mr. Johnson’s sentence since the DOC records reflect that the institution had found that he had earned those credits and he had not maxed out of the statutory allowable deduction for that month. However, the Court will not micro manage the DOC regarding when and the amount of credit time he may have earned during any particular month. Simply put, the amount of credits that an inmate earns for participating in educational and work programs is within the discretion of the DOC. However, once that determination is made, an inmate is entitled to those credits up to the limit set forth in the statute.

¹⁶ Escherich Aff. ¶ 4 (Sept. 18, 2008).

9. Based upon the above considerations, the Court will grant the State's Motion for Summary Judgment as once the credit adjustment is made as ordered by this opinion, there are no other legal or factual matters in dispute.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.